OBJECTION TO OBJECTIONS REVIEWING OFFICER AND REGIONAL FORESTER, R-1 NORTHERN REGION, USDA FOREST SERVICE

MONTANA ECOSYSTEMS COUNCIL;)
NATIVE ECOSYSTEMS COUNCIL,)
OBJECTORS)
v.)
)
BILL AVEY,)
HELENA RANGER DISTRICT,)
HELENA NATIONAL FOREST,)
RESPONSIBLE OFFICIAL)

DATED THIS 27th Day of September, 2013

<u>Sent via email to:</u> Objections Reviewing Officer and Regional Forester, Northern Region, 200 East Broadway, P.O. Box 2779, Missoula, Montana, 59087 appeals-northern-regional-office@fs.fed.us

NOTICE OF FLUME CHESSMAN OBJECTION

<u>DECISION OBJECTED:</u> Helena Forest Supervisor Bill Avey signed the Red Mountain Chessman Reservoir Project and site-specific Forest Plan Amendment Draft Decision Notice (DDN) and Draft Finding of No Significant Impact (DFONSI) August 19, 2013, selecting the proposal (the only action alternative) as described in the EA, DDN and DFONSI. The ground-disturbing activities include clearcut logging and prescribed burning of approximately 490 acres, and .5 miles of new ("temporary") road construction.

The Montana Ecosystems Council and Native Ecosystems Council hereby give notice pursuant to 36 CFR 218 that we Object to Supervisor Avey's Draft Decision Notice and Draft FONSI to approve the Red Mountain Chessman Project on the Helena Ranger District of the Helena National Forest.

As a result of the DDN and DFONSI, Objectors, as well as individuals and members of the Montana Ecosystems Defense Council and Native Ecosystems Council, would be directly and significantly affected by the clearcut logging, roadbuilding and burning. Objectors are conservation organizations working to ensure protection of biological diversity and fully-functioning ecosystems in the Wild Rockies bioregion, including the Helena National Forest

(HNF). Members use the general areas in and around the Project area for recreation and other forest-related activities.

The DDN and DFONSI are not in accordance with the legal requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and its implementing regulations, the National Forest Management Act (NFMA) 16 U.S.C. 1600 et seq., and its implementing regulations, the Administrative Procedures Act, (APA) 5 U.S.C. Sec. 706, the Clean Water Act, the Endangered Species Act and the Helena N.F. Long-Range Management Plan (Plan).

INTRODUCTION

The fundamental issue before the Objections reviewing officer is whether or not the Forest Service followed the law. Not even forest-wide, Forest Plan standards can bring reason to the Forest Service's clearcutting, burning and roadbuilding juggernaut. The 10-Mile Watershed Working Group never agreed to a Forest Plan amendment.

The Project is yet another bazaar, post-hoc rationalization to justify the costly and totally unnecessary destruction of national forest system lands. These lands were supposed to be owned and managed in trust for the benefit and enjoyment of the American people. We The People are struggling mightily to hold onto every scrap of land that is not already under the control of industrial logging corporations. This represents another chapter in the never-ending struggle over who controls public land and water.

STATEMENT OF REASONS

The Forest Plan amendment fails to comply with NEPA and NFMA and the Clean Water Act.

The Forest Service may propose and implement amendments to a forest plan "in a process complying with NEPA and NFMA" *Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d at 961.

"For each proposal for a plan amendment, the responsible official must complete appropriate environmental analyses and public involvement in accordance with Forest Service NEPA procedures. . . . [and] the responsible official must provide opportunities for collaboration" 36 C.F.R. §219.8(a)(b)(2011).

Additionally, NFMA requires that an amendment provide for diversity of wildlife in a manner that is consistent with the best available science. 16 U.S.C. §1604(g)(3)(B); 36 C.F.R.§219.24(a) (2011).

a. The Forest Service did not complete an EIS, the appropriate form of environmental analyses.

As part of the "hard look" analysis, an EIS must "fully address cumulative environmental effects or 'cumulative impacts." "Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. §1508.7.

The cumulative impacts analysis must include more than general statements about possible effects or risks. "[S]ome quantified or detailed information is required. Without such information, neither the courts nor the public ... can be assured that the [agency] provided the hard look that it is required to provide." *Te-Moak Tribe of Western Shoshone of Nev. v. U.S. Department of the Interior*, 608 F.3d 592 (9th Cir.2010).

b. The Forest Service failed to take a hard look at the effectiveness of industrial logging, roadbuilding and prescribed burning to reduce sediment risk.

The current aggregate fuel/fire hazard condition on all ownerships within the project area has not been displayed on a map. Nor has the post-project fuel/fire hazard condition and strategy on all ownerships been displayed on a map.

The Forest Service has no long-term program for maintaining the allegedly lower-risk conditions after Project completion. How will treated areas be re-treated in the future? How long until the next treatment is necessary? How much will a continuous lower-risk landscape cost taxpayers over time? And what is the likelihood that a perpetual program will be funded adequately by Congress in the future and in a timely fashion? None of these critical questions have been answered. The environmental impacts of these realistic variables must be analyzed and disclosed.

The FS failed to disclose the purpose of individual treatment units. For example, Unit 15 appears to have zero potential to cause sediment loading in Chessman Reservoir. What is the probability of each unit causing the exact same sediment risk to the reservoir? For each unit, risk based on steepness of slopes, and distance between clearcut units and reservoir is not disclosed. Why is "treatment" the same for each unit? Why is clearcutting warranted for each and every unit? Clearly, the universal clearcutting method was an arbitrary decision in spite of

the fact it is not the optimum method. Alternatives were dismissed out of hand.

c. The agency must look at the big picture in a cumulative effects analysis.

A programmatic EIS must analyze risk issues on an appropriate landscape scale. How will widespread vegetation changes caused by past, present and future clearcutting, roading and prescribed burning affect fire behavior and soil stability when one of any number of possible fire scenarios plays out on the land in the foreseeable future? No disclosure is an unacceptable response.

When addressing amendments to a forest plan, cumulative impacts analysis must address forest-wide impacts because otherwise the Forest Service will amend Plan standards piecemeal, project after project, throughout the forest without ever having to evaluate the amendments' cumulative environmental impacts. The Helena NF has repeatedly amended the MIS Elk standard in a such a piecemeal fashion. NEPA does not permit piecemealing. See: *Native Ecosystems Council v. Dombeck* 304 F.3d 886, 897 (9th Cir. 2002).

The FS failed to adequately disclose cumulative effects of other Plan Amendments. The following five Plan amendment have significantly weakened Big Game standards:

- 1. Amendment #7 (1993), a 590-acre site-specific amendment exempted the Miller Mountain hard rock mineral exploration project from Forest Plan Big Game Standards 3 and 4(a) -- standards associated with new construction and drill sites.
- 2. Amendment #21 (2001), a site-specific amendment exempted the Jimtown Project from Big Game Standard 4(a). The wildlife analysis concluded that the existing condition was not consistent with this standard.
- 3. Amendment #23 (2001), a site-specific amendment exempted the Cave Gulch Post-Fire Salvage Project from Big Game Standard 4(a). The wildlife analysis indicated that the existing condition was not consistent with Standard 4(a).
- 4. Amendment #2 (ongoing), this site-specific amendment exempted the Fuels Reduction and Hazardous Tree Removal Project from Forest Plan Big Game Standards 3 and 4(a). The wildlife analysis concluded that Forest Plan Standard 3 Forest Plan Standard 4a were not being met.

5. Amendment #2 (ongoing), exempts the Cabin Gulch Vegetation Treatment Project from the Forest Plan Big Game Standards 3 and 4(a). Approximately 2,313 acres of hiding cover will be removed in the Cabin Creek Herd Unit, and 190 acres of hiding cover will be removed in the North Fork Herd Unit

Clearly, a pattern of piece-mealing exists. Each time the agency says it's a "one time" event. Moreover, the FS fails to disclose that currently only 5 of 27 elk herd units on the Forest meet Forest Plan Standard 4(a), and only 10 of 27 elk herd units on the Forest meet Forest Plan Standard 3.

Chronic violations of these standards represent a significant threat to the Project area, Continental Divide, and the Helena National Forest. Forest-wide non-compliance with these standards represents a significant change from Forest Plan management prescriptions, goals, and objectives to maintain and improve elk and Big Game habitat by limiting road density and preserving hiding cover.

The Forest Service's failure to provide quantified information on Forest Plan non-compliance of Standards 3 and 4(a) across the Forest violates NEPA.

d. The Forest Plan amendment must be consistent with the best available science.

A forest plan amendment must provide for diversity of wildlife in a manner that is consistent with the best available science. 16 U.S.C. §1604(g)(3)(B); 36 C.F.R. §219.24(a)(2011).

The amendment fails this mandatory requirement. There is no rationale as to how this amendment is consistent with the best available science on elk and big game management. To the contrary, the amendment authorizes a project that violates the best available scientific standards for elk and mule deer security and elk and Big Game habitat effectiveness. Failing to follow the best available science is in violation of NFMA. 36 C.F.R. §219.24(a)(2011).

Because the Helena N.F. exempted itself from complying with its own standards for elk habitat -- forest-wide big game standards #3 and #4(a), the default "best science" is Hillis (security) and Christensen (habitat effectiveness). Objectors insist that the agency comply with the Hillis and Christensen standards: there are no other objective and quantifiable standards in effect to protect elk habitat in this Project area.

The Project area fails both Forest Plan standards for elk habitat, fails the Hillis standard for security, and fails the Christensen standard for habitat effectiveness. The Project area fails all available objective, quantifiable standards for determining whether or not elk and big game habitat is abundant.

e. The DEA fails to adequately assess and disclose direct and cumulative impacts to water quality.

Clearcut logging, roadbuilding and burning are not the only activities that have significant adverse impacts to water quality.

"Past and ongoing management activities, such as road use, OHV use, mining, and livestock grazing would continue to affect water resources." EA, p. 28.

That's it? In the entire 178-page EA, that's it? This is a list of possible impacts. It is not an environmental analysis.

"Reasonably foreseeable federal and non-federal activities that could affect water quality, water yield, and riparian health and vigor in the cumulative effects analysis area include future cutting/removal of trees (e.g. broader-scale hazardous fuels mitigation in the upper Tenmile drainage), small-scale mining or failure of old mines, continued livestock impacts in grazing allotments (there are small portions of two grazing allotments within the project area boundary), roads, and fire. Foreseeable timber harvest activities in the analysis area on the National Forest are not likely to substantially affect water quality or riparian-area viability, assuming compliance with the SMZ law and strict adherence to forestry BMPs. (Montana DNRC, 2013). The impacts of roads on water quality would be incrementally reduced due to the road maintenance and improvements planned as part of or in conjunction with the proposed action, as well as other road maintenance/improvement projects." EA, p. 34.

Again, this is the proverbial "mere listing" of cumulative impacts, not a proper analysis as required by NEPA.

Nobody wants livestock grazing in a municipal reservoir. What is the level of fecal pollution from cattle allotments? How many pounds/tons of cow manure on average will be deposited into the reservoir and its tributaries each grazing season? OHV, ATV and 4-Wheeler activity is not disclosed in any meaningful, quantitative method. These machines are notorious for mangling riparian vegetation, ruining streambank areas and causing sediment pollution. No quantitative baseline data is offered, no analysis and no estimate of the environmental damage is included in the EA.

Apparently, the FS failed to solicit and disclose comments from the Montana Department of Environmental Quality regarding the impact of the Project on water quality. No cooperation, no collaboration, no contact with the agency responsible for maintaining water quality standards in Montana. Nothing.

Roads are typically the #1 contributor of sediment into streams and reservoirs. No disclosure of the current aggregate, pre-project, and post-project road densities for all properties was included in the Project EA.

The FS didn't disclose records of compliance with its water quality monitoring requirements as set forth in its Forest Plan. It seems odd that no reservoir data is available for use as a baseline against actual Project activity sediment delivery.

The three following assumptions related to water quality made in the Hydrology Report create a built-in bias in favor of clearcut logging, prescribed burning and roadbuilding (Alternative 2). *See generally:* Draft Hydrology Report, p. 4.

Assumption 1. "A wildfire in the project area in the absence of the proposed treatments would have higher-severity impacts to soils than proposed prescribed burning or pile burning."

This is not categorically true. For example, a small fire in June, or in September, could very easily have less impact on soils in the Project area than 490 acres of clearcuts, .5 miles of new road construction and prescribed burning over hundreds of acres.

Assumption 2. "Road improvements (new drainage features, gravel application) may result in elevated erosion shortly after installation, but will remain effective in reducing sediment delivery over a period of at least five years."

While this may be true, it implies that road improvements ie. BMPs, are needed every 5 years, and that it has been long overdue. The EA does not disclose when roads in the project area were last brought up to minimum BMP standards. It appears that the FS has been operating roads out of compliance for some time. Is this an undisclosed "purpose and need?"

Assumption 3. "The proposed temporary road segment would not develop sediment delivery points because it would be located in an upland location without hydraulic connection to any body of water or wetland."

This is most interesting. The utility of the temporary road is to access Unit 15. If the road is "without hydraulic connection," I strongly suggest that Unit 15 also lacks any hydraulic connection. This begs the question: How does Unit 15 relate to the Project's purpose and need?

We object strongly to the following proposed actions:

"Crossings of the flume and a tributary to Beaver Creek (the first tributary downstream from the reservoir, SE ¼ of section 2) by logging equipment could potentially occur in order to minimize skidding distances and disturbance." Draft Hydrology Report, p. 8.

"A ford of Beaver Creek on an existing road (299-H1) would also be required in order to haul logs from units 4 and 6. Project-related use of the ford also has the potential to temporarily increase sediment delivery to the stream." *Id.*

"Moreover, project road improvements recommended in this report would reduce ongoing chronic sediment sources to Beaver Creek and Corral Creek from roads in the project area, which would result in a net reduction in the sediment loading as a result of the project." Draft Hydrology Report, p. 13.

There is no excuse for allowing heavy logging equipment in Beaver Creek. The area is part of the Lake Helena TMDL because it is not meeting water quality standards. The EA fails to adequately disclose the "chronic" condition that exists. The cumulative impacts will add more sediment to an already unacceptably high level of sediment draining from Forest Service roads into streams. More roads and clearcuts is the last thing this area needs.

The EA scarcely addressed the grazing allotments in the Project area. The FS has failed to adequately quantify and disclose the cumulative effects of these grazing allotments on soil and water quality.

The FS must consider the cumulative effects of activities on land of all ownerships in or adjacent to the affected watersheds.

We consider the cumulative impacts of the Project excessive and illegal. The area should be designated "unsuitable for logging." We oppose the building of any new or temporary roads as part of this project. New road construction should be permanently prohibited. The EA is woefully inadequate.

REMEDY REQUESTED

The decision-making process supporting the Red Mountain Chessman Reservoir Project DDN is inadequate. The environmental impacts on the environment are unacceptable. Appellants request the Red Mountain Chessman Reservoir Project Draft DN and Draft FONSI be withdrawn. If the HNF wishes to further carry out management activities in the Red Mountain Chessman Reservoir Project area, it must prepare an Environmental Impact Statement that remedies all the violations of Federal and State laws, policies, and regulations identified in this Statement of Reasons.

Thank you for the opportunity to Object.

Sincerely,

Steve Kelly, Executive Director Montana Ecosystems Defense Council P.O. Box 4641 Bozeman, MT 59772 Tel: (406) 586-4421

And on behalf of:

Sara Johnson Native Ecosystems Council P.O. Box 125 Willow Creek, MT 59760